

APPEAL NO. 020336
FILED MARCH 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 15, 2002, the hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) compensable injury of _____, does not extend to her left hip and to seizures. The claimant has appealed on various evidentiary grounds, asserting that the hearing officer erroneously required expert evidence and discounted the medical evidence of the claimant's doctors; that she established her claim based on the doctrine of *res ipsa loquitur*; and that the evidence adduced by the respondent (carrier) failed to overcome her *prima facie* case. The carrier responded that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that on _____, while working as a waitress, she slipped and fell, landing on her back and striking the back of her head; that after being seen at an emergency room and later by a doctor, she returned to work after approximately one week and continued to work until her employment was terminated on April 26, 2000. She said she first had left hip symptoms in early December 1998; that she changed doctors and commenced chiropractic treatment in early February 1999; and that she had her first seizure on or about November 5, 2000, and has had one more since that time.

The parties represented that following her accident, the carrier accepted head, neck, and back injuries. The claimant had the burden to prove by a preponderance of the evidence that her injury extended to her left hip and to her seizures. The claimant's burden was more than simply putting on a *prima facie* case and the carrier had no burden to adduce any evidence. Further, the claimant cites no authority for the proposition that the doctrine of *res ipsa loquitur*, a negligence doctrine, applies in this case. The disputed issues presented the hearing officer with questions of fact to resolve. The claimant had the burden to prove by a preponderance of the evidence that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d

701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge